

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling that)	
Inflexion Communications)	WC Docket No. 04-52
ExtendIP VoIP Service is Exempt from)	
Access Charges)	

OPPOSITION OF SBC COMMUNICATIONS INC.

I. INTRODUCTION AND SUMMARY

SBC Communications, Inc. (SBC) submits the following comments in opposition to the above-captioned petition for declaratory ruling filed by Inflexion Communications Corporation (Inflexion).¹ Inflexion asks the Commission to declare that Inflexion’s “ExtendIP” service is exempt from access charges. In its petition, however, Inflexion provides no meaningful facts about itself or its service, no coherent policy rationale for its request, and absolutely no legal analysis whatsoever. Rather than expending scarce Commission resources trying to divine this information, the Commission should summarily deny Inflexion’s petition and instead focus its attention on expeditiously resolving the growing number of pending proceedings that concern the compensation mechanisms and overall regulatory structure applicable to services that rely on the Internet Protocol (IP).²

¹ Petition for Declaratory Ruling that Inflexion Communications ExtendIP VoIP Service Is Exempt from Access Charges, WC Docket No. 04-52 (Feb. 27, 2004) (Inflexion Petition).

² Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Are Exempt from Access Charges, WC Docket 02-361 (Oct. 18, 2002); Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211 (Sept. 22, 2003); Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. §160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b), WC Docket No.

Although SBC opposes Inflexion's petition, SBC believes that companies who provide IP-enabled services -- which we refer to as "IP platform services" -- are providing interstate information services that should not be subject to traditional common carrier regulation.³ To the extent these services originate or terminate over the PSTN, however, they are subject to the Commission's access charge regime until such time as the Commission moves to bill-and-keep or otherwise modifies its access charge rules. To that end, SBC is committed to working with the Commission, the communications industry, and other stakeholders to develop and implement a fair and equitable proposal for intercarrier compensation reform.

II. DISCUSSION

A. Inflexion Provides No Meaningful Facts About Itself or Its Services.

Inflexion purports to be a provider of voice over IP (VoIP) services and claims to be interested in serving "periphery markets not served by the Universal Service Program" with its ExtendIP service.⁴ According to Inflexion, ExtendIP provides customers with "substantially the same functionality as Plain Old Telephone Service, plus more" using "communications application of the Internet."⁵

03-266 (Dec. 23, 2003) (Level 3 Petition); Petition of SBC Communications Inc. For a Declaratory Ruling Regarding IP Platform Services, WC Docket No. 04-__ (Feb. 5, 2004) (SBC IP Platform Services Petition for Declaratory Ruling); Petition of SBC Communications Inc. for Forbearance from Application of Title II Common Carrier Regulation to IP Platform Services, WC Docket No 04-29 (Feb. 5, 2004) (SBC IP Platform Services Petition for Forbearance); *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, FCC 04-28 (released March 10, 2004); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001) (*Intercarrier NRPM*).

³ See SBC IP Platform Services Petition for Declaratory Ruling.

⁴ Inflexion Petition at 2, 7.

⁵ Inflexion Petition at 3, 7.

But aside from these vague statements, Inflexion provides no meaningful information that would allow commenters and the Commission to make informed judgments about Inflexion's petition. Specifically, Inflexion's petition is silent regarding the actual services it offers (*e.g.*, local calling, long distance calling, Internet access); the basic network architecture it uses to provide service (*e.g.*, routing, transport, end user connectivity, customer premises equipment); the means by which its service interacts with the public switched telephone network (PSTN);⁶ or any other relevant facts that would assist interested parties in understanding the basis for Inflexion's claims.⁷ Without this basic information, there is simply no way the Commission can rationally evaluate Inflexion's request for a declaratory ruling.⁸ Accordingly, the Commission should summarily deny Inflexion's petition.

B. Inflexion Offers No Coherent Policy Rationale to Support Its Petition.

Though difficult to decipher, the crux of Inflexion's policy argument appears to be that, if the Commission exempts Inflexion from paying access charges, Inflexion will be able to offer cheaper telephone service to consumers in "the underserved market."⁹ But as Inflexion appears to implicitly recognize, many underserved markets are located in high-cost, rural areas of the country, where access charges play a particularly vital role in sustaining the PSTN infrastructure

⁶ Although Inflexion has failed to describe the means by which it intends to deliver service to its customers, the fact that Inflexion is seeking an exemption from access charges suggests that Inflexion intends to offer service that permits communications between IP networks and the PSTN.

⁷ Inflexion does list some of the *features* associated with its service, many of which are related to billing and financial issues. Inflexion Petition at 8 (stating that Inflexion can offer: service without long term contracts; instant provisioning; flexible prepaid calling; non-traditional voice mail; service without requiring a home address; disposable customer premises equipment; aggregation to address credit risk; alternative billing). But other than a vague reference to "non-traditional voice mail," Inflexion never describes the actual *service* it provides to customers.

⁸ See 47 C.F.R. § 1.41 (requiring that a party "set forth clearly and concisely the facts relied upon" when making a request for Commission action).

⁹ Inflexion Petition at 2.

on which Inflexion will presumably need to rely for the origination and/or termination of its services. Thus, Inflexion's requested exemption would actually have the effect of *undermining* the viability of the very same networks that make Inflexion's service possible.

Moreover, as SBC and others have explained in their comments on Level 3's forbearance petition,¹⁰ exempting a provider (or class of providers) from access charges in the piecemeal fashion suggested by Inflexion would be affirmatively harmful to both consumers and competition. First, exempting Inflexion from access charges would result in unreasonable price discrimination between similarly situated users of access services and would lead to unjust and unreasonable rates for those services.¹¹ Second, exempting Inflexion from access charges would harm consumers by jeopardizing the universal availability of affordable telecommunications service across the nation.¹² And third, exempting Inflexion from access charges would undermine fair and efficient competition in the communications marketplace.¹³ Thus, rather than handing Inflexion an unwarranted competitive advantage and placing the affordability of consumer rates at risk, the Commission should deny Inflexion's petition and instead proceed with holistic intercarrier compensation reform as outlined in the *Intercarrier NPRM*.

C. Inflexion Provides No Legal Analysis Whatsoever to Support Its Petition.

Perhaps the most striking deficiency in Inflexion's petition is the fact that, despite seeking a declaration that access charges do not apply to its services, Inflexion never bothers to

¹⁰ Level 3 Petition.

¹¹ See SBC Opposition, WC Docket No. 03-266 at 20-24; SBC Reply Comments, WC Docket No. 03-266 at 13-14.

¹² See SBC Opposition, WC Docket No. 03-266 at 20-24; SBC Reply Comments, WC Docket No. 03-266 at 13-14.

¹³ See SBC Opposition, WC Docket No. 03-266 at 27-30; SBC Reply Comments, WC Docket No. 03-266 at 13-14.

discuss the Commission's access charge rules or the reasons why those rules purportedly do not apply to Inflexion's service. Indeed, Inflexion's petition does not contain even a single reference to Rule 69.5 or any Commission orders concerning the Commission's access charge regime.¹⁴ By contrast, in response to Level 3's forbearance petition, SBC and others have thoroughly demonstrated that the Commission's rules and orders require the payment of access charges on the PSTN side of an IP-to-PSTN communication,¹⁵ which is presumably the type of service offered by Inflexion.¹⁶

The only assertion by Inflexion that arguably qualifies as a legal argument is Inflexion's bizarre and wholly unsubstantiated claim that "[i]mposing access charges on Inflexion violates antitrust principles."¹⁷ Inflexion, however, never identifies the "antitrust principles" at issue, never explains the basis for its claim that these unidentified principles are being violated, and never cites any antitrust case law or other legal authorities that might provide a clue as to the nature of the alleged antitrust violation. In short, Inflexion has failed to offer any intelligible arguments as to why the Commission's existing access charge rules do not apply to the service Inflexion offers.

D. The Commission Should Summarily Deny Inflexion's Petition and Focus on Resolving Pending Proceedings on IP-Related Services and Intercarrier Compensation.

The Commission has before it a growing number of proceedings that raise important questions about the compensation mechanisms and overall regulatory structure applicable to

¹⁴ See 47 C.F.R. § 69.5.

¹⁵ See SBC Opposition, WC Docket No. 03-266 at 9-13. See also Verizon Comments, WC Docket No. 03-266 at 6-11.

¹⁶ See *supra* note 6.

¹⁷ Inflexion Petition at 12.

services that rely on IP.¹⁸ Rather than diverting scarce Commission resources to addressing Inflexion's meritless petition, the Commission should instead focus its efforts on expeditiously resolving these pending proceedings and providing sorely needed answers to the many regulatory questions regarding services that rely on IP. Accordingly, SBC urges the Commission to summarily deny Inflexion's petition.

IV. CONCLUSION

For the forgoing reasons, the Commission should deny Inflexion's petition for declaratory ruling.

Respectfully Submitted,

By: **/s/ Jack Zinman**

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¹⁸ See *supra* note 2.